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January 8, 1998

VIA HAND DELIVERY

Ms. Magalie R. Salas
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Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

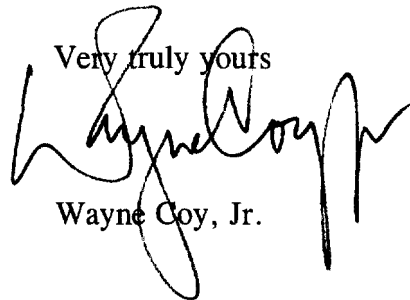
Re: Comments in MM Docket No. 97-217

Dear Ms. Salas

Transmitted herewith, on behalf of the National ITFS Association, are the original and five (5) copies of its Comments in the above-referenced proceeding.

Should you have any questions with respect to this filing, please contact the undersigned.

Very truly yours



Wayne Coy, Jr.

Enclosures

cc: Dr. Theodore Steinke
Chairman and CEO
National ITFS Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of)	
)	
Amendment of Parts 1, 21 and 74 to Enable)	MM Docket No. 97-217
Multioint Distribution Service)	
and Instructional Television Fixed)	File No. RM-9060
Service Licensees to Engage in Fixed)	
Two-Way Transmissions)	

COMMENTS

The National ITFS Association ("NIA"), through its attorney, hereby files Comments in the above-captioned proceeding in support of Petitioner's proposal to enhance the ability of MDS, MMDS, and ITFS licensees to provide two-way communications services through the use of two-way audio, video, and data communications from "response" stations, the use of booster stations in a cellular configuration designed to create spectrum flexibility.

BACKGROUND

1. NIA is a national association of more than 70 educators located in 26 states and the District of Columbia who are using Instructional Television Fixed Service (ITFS) frequencies to provide educational services to students enrolled in for-credit courses in elementary, secondary, college, post-graduate and career training. They include public, private and parochial schools, community and junior colleges, public broadcasters, state agencies and non-profit corporations.

2. The purpose of the organization is to promote that effective use of the ITFS spectrum for its intended educational use and to encourage and assist potential user institutions to develop local or regional instructional networks using ITFS. In addition, the association, through a quarterly newsletter, keeps its members informed as to regulatory and judicial decisions affecting the industry, and presents articles of interest to educators generally involved in "distance learning."

NIA'S VIEW OF THE EMERGING ISSUES

3. For more than a year, representatives appointed by the Board of Directors of NIA have been engaged in meetings with their counterparts from the Wireless Cable Association International ("WCAI") to come to a working understanding of issues of mutual interest deriving from the emerging use of digital technology in the wireless cable/ITFS world. In the course of the discussions it was necessary for the Board of the Association to deal with the emerging issues associated with the transition and implementation of digital technology. Both as a guide to the NIA position in the negotiations and as a foil for the membership to think through the issues, NIA developed its "Statement on Emerging Issues". A copy of the statement is attached. Although it is not sequentially responsive to the paragraphs (especially Paragraphs 58-89 of the NPRM), it is designed to give the staff a general guideline in developing the regulatory framework for the digital environment.

4. Those discussions with the WCAI reached fruition only the day before these Comments were due. The agreement of the parties is expressed in a **Joint Statement of Position** which is concurrently being presented to the Commission this date, the underlying goal of these meetings was to craft a regulatory environment that assure that the educational community

reasonably shares in the benefits of that technology while enhancing the wireless cable industry's ability to become a viable competitive force in the multi-channel video marketplace. A copy of that position paper is attached setting forth the substance of the understandings that were reached.

5. Individual members of NIA and other educators either part of or outside the negotiations are free to add their comments in this proceeding, but the Association itself urges that the Principles set forth in the Joint Statement be adopted in their entirety as part of the Order resolving the instant matters.

Respectfully submitted

NATIONAL ITFS ASSOCIATION

By: 

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January 8, 1998

NATIONAL ITFS ASSOCIATION

EMERGING ISSUES

Adopted by the Board of Directors

1/6/98

The following statement summarizes the position of the National ITFS Association (NIA) on the emerging issues relative to the participation of ITFS licensees in the digitization of the ITFS spectrum and in other "new technologies." It has been developed with the participation of a broad range of ITFS licensees. It articulates principles and policies that NIA believes should serve as the basis for FCC rule on the application of "new technologies" in the ITFS service and assure the continuing integrity and effectiveness of the ITFS in each community in America.

INTRODUCTION

The development of this statement of policy has been based on the following principles;

1. The FCC has acted wisely, and in the public interest, in insuring that a substantial portion of the electronic spectrum is preserved for the exclusive use of qualified educational agencies;
2. ITFS licensees should have the authority and discretion to design and provide a service that is responsive to the needs of their educational community;
3. ITFS licensees should be permitted, but not required, to lease excess ITFS capacity for commercial use and to receive a portion of the commercial revenues to provide educational services;
4. ITFS licensees should have equal rights to the use of the new technologies developed for use in the ITFS/MMDS spectrum; and,
5. the effective application of the first four principles is best insured by the development of FCC rules that define the basic parameters of the relationship between ITFS licensees and their MMDS partners.

1. DIGITIZATION AND EDUCATIONAL CAPACITY

Rationale

Digitization of the 2.5 Ghz band offers the prospect of multiple video/audio program tracks on a given ITFS channel as well as a variety of video, voice and data communications. One of the important issues is the extent to which ITFS licensees that have entered into excess capacity lease agreements shall be required by regulation or policy of the FCC to retain digital transmission capacity for ITFS programming.

In any digitized ITFS/MMDS system the basic measurement of capacity is spectrum. NIA believes that unless a substantial portion of spectrum continues to be readily available for educational purposes, ITFS cannot become, or remain, a useful service in the view of its educational constituents.

NIA recognizes, however, that digitization of the ITFS spectrum retained for education may create additional program capacity that licensees may not, initially, need to serve their constituencies. NIA, therefore, supports a policy which would permit MMDS operators to program and to make payments to ITFS licensees for the use of this programming capacity.

Principles

- 1.1 In any digitized ITFS/MMDS system, the ITFS entity should be required to deliver no less instructional material than is currently required for analog ITFS systems under Section 74.931(e) of the Commission's Rules.
- 1.2 In any digitized ITFS/MMDS system, the ITFS entity should by regulation be required to retain for educational purposes no less than 5% of the total ITFS spectrum.
- 1.3 In any digitized ITFS/MMDS system, during the initial and any subsequent term of the agreement, the ITFS entity should by regulation maintain recapture rights to a minimum of a further 20% of the total ITFS spectrum (such that the minimum combined educational spectrum reservation is 25% of total ITFS spectrum, consisting of 5% retained spectrum plus a further 20% in recapture spectrum). By regulation, the lowest permissible rate of recapture should be 5% of total ITFS spectrum per year, with a maximum one year advance notice per instance of recapture. The right to recapture may be deferred during the first 5 years of any agreement through contract negotiations.

2. ITFS PROGRAMMING

Rationale

ITFS licensees must take responsibility for insuring that the instructional materials on their channels meets the FCC requirements for ITFS programming.

NIA believes that the current number of educational programming hours, required by the FCC in an analog system, is a sufficient minimum number of programming hours in a digital system.

Principles

- 2.1 ITFS programming is programming offered by the licensee or any other accredited educational agency or institution that the ITFS licensee has determined to be consistent with the provisions of Sections 74.931 (a), (b) and (c) of FCC Rules.
- 2.2 ITFS licensees shall insure that the educational materials scheduled on their licensed channels meets the requirements for ITFS programming.

3. TERM OF EXCESS CAPACITY AGREEMENTS

Rationale

NIA recognizes the need of the MMDS industry to demonstrate continuing access to spectrum as an essential element of its ability to fund its capital requirements. NIA also recognizes the certainty that technology, the nature of the services provided using a specific technology, and the economic circumstances of the MMDS industry, will change substantially over the life of any long term agreement. NIA believes that the maximum ten year term for excess air time agreements, now allowed by FCC rule, provides the best assurance that the educational services of ITFS licensees will benefit from these technical changes. In digitized systems NIA will, however, support a term of up to fifteen years in contracts which assure ready access to twenty-five percent of the total licensed spectrum for ITFS programming, guarantee reasonable access to all new technological developments for educational use, and assure timely recapture provisions.

Principle

- 3.1 The term for excess capacity agreements for digitized ITFS/MMDS systems can be up to a maximum of fifteen years provided that the agreement contains: 1) the assurance that 25% of the total ITFS spectrum is designated as educational capacity, 2) the right of the ITFS licensee to be guaranteed reasonable access to utilize all new technological developments, and 3) the right for ITFS licensees to recapture educational capacity with no operational detriment and no more than proportional economic detriment.

4. TWO WAY INTERACTIVITY

Rationale

The wireless cable industry has sought permission from the FCC to conduct two-way transmissions over ITFS and MMDS frequencies. The petition also provides flexible use of booster stations and an expedited grant procedure for both two-way and booster applications.

NIA believes that the application of two-way interactivity will enhance the effectiveness of ITFS services and will assist ITFS licensees to gain broader acceptance for ITFS as an effective distant learning delivery system.

To protect ITFS licensees and the ITFS service, return paths and booster stations on an ITFS licensee's channels should be licensed only to the ITFS licensee. Further, so as to preserve the ability of each licensee to transmit multiple channels of ITFS programming, at least 25% of the total spectrum held by each licensee should be retained for "downstream" transmissions.

Further, NIA believes that expedited grant procedures for two-way operations are in the interest of both the MMDS operator and the ITFS licensee. When, however, such expedited procedures are employed, all affected ITFS licensees are entitled to absolute protection against interference in their educational services.

Principles

- 4.1 In a digital two-way system ITFS licensees should reserve at least 25% of their total licensed capacity for "downstream" transmission so as to preserve the ability of each licensee to transmit multiple channels of ITFS qualified programming to its receive sites.
- 4.2 In the application of expedited grant procedures for two-way systems, ITFS licensees must be protected from interference caused by two-way or booster operations, whether or not an ITFS licensee has objected to a given proposal, and/or, whether or not the licensee is a participant in an excess capacity agreement.

5. LICENSING

Rationale

NIA believes that the long term integrity of the ITFS services is best assured if ITFS licensees hold the license for (1) any channel used to deliver ITFS programming, and (2) any booster station or return path that operates on a channel licensed to an ITFS entity.

Principles

- 5.1 In any locale in which the exchange of channels between two ITFS licensees would reduce interference in that area, and/or an exchange of channels is necessary to preserve the licensee's capacity to deliver downstream programming on 25% of its licensed spectrum, the FCC should routinely allow an exchange of channels if both licensees request the change.
- 5.2 Licenses for all upstream and downstream booster stations and any return paths that employ any ITFS licensed channel should be held in the name of the ITFS licensee.
- 5.3 All ITFS licensees should be permitted to "channel load" all of their required transmissions, in addition to their transmissions over recaptured airtime, onto any ITFS channel within the same multi-licensee system. Such "channel loading" shall not be considered negatively at the time the ITFS licensee seeks renewal of its authorization.

6. HIGH SPEED INTERNET ACCESS

Rationale

A recent technological development is the use of ITFS channels for high speed Internet access. Although this can be provided with analog transmissions, the real promise for widely available over-the-air Internet lies in the digital world.

NIA believes that ITFS licensees can make a very practical additional contribution to schools if ITFS licensees, independently, or in cooperation with MMDS operators, can make Internet access available to schools within their coverage areas. NIA believes that ITFS can provide educational users with the most readily accessible and least costly high speed Internet access.

Further, if ITFS channels are leased to offer Internet access to business and the public on a commercial basis, there could be substantial new revenues to be shared with ITFS.

Principles

- 6.1 All ITFS licensees shall have the right to use the Internet services offered on the local ITFS/ MMDS system at the lowest prevailing rate, or at a lower negotiated rate.

7. OTHER NEW TECHNOLOGIES

Rationale

NIA believes that if ITFS licensees are to provide effective and competitive educational services, they must be able to employ all new technologies that are developed for use in MMDS including two-way communications and Internet access. Further, the value of ITFS educational services will be enhanced and become more attractive to potential users if all the technological processes, devices, systems, and/or applications that are features of the MMDS service (such as addressability and program encryption) are also accessible to ITFS licensees.

Principles

- 7.1 ITFS licensees shall have the right to license, develop, construct, and use for educational purposes any technological process, device, system, and/or application on ITFS that is authorized by the FCC for use in an MMDS service.
- 7.2 ITFS licensees that are participants in excess capacity agreements shall have the right to reasonable access for educational purposes to any technological process, device, system, and/or application that is in use on the ITFS/MMDS system. (Example: addressability, two-way capability, etc.)

JOINT STATEMENT OF POSITION

For over a year, representatives of the National ITFS Association, Inc. ("NIA") and the Wireless Cable Association International, Inc. ("WCA") have been meeting in an effort to come to agreement on issues of mutual interest deriving from the emerging use of digital technology on Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") channels. The underlying goal of these negotiations has been to craft a regulatory environment that assures that the educational community reasonably shares in the benefits that digital technology will permit, while permitting the wireless cable industry to become a viable competitive force in the marketplace (which benefits both the wireless cable industry and the ITFS community). After significant compromise by each side, NIA and WCA have come to agreement that the public interest will best be served by incorporation of the following concepts into the rules and policies of the Federal Communications Commission. Moreover, NIA and WCA have agreed to create a standing working group to address current and future issues of concern. Because the following concepts reflect a series of compromises between the parties on matters that are inextricably intertwined, NIA and WCA jointly urge the Commission to adopt them en toto without change.

- I. In order to assure the substantial educational use of the ITFS spectrum, each ITFS licensee shall, at a minimum, have the right to use 25% of capacity of its channels. In any digitized system the ITFS licensee shall be required to deliver no less instructional material than is currently required for analog ITFS systems under Section 74.931(e) of the Commission's Rules.
- II. In order to assure the immediate availability of capacity for immediate ITFS usage, each ITFS licensee leasing capacity for digital usage shall refrain from leasing an amount equal to no less than 5% of the capacity of its channels.
- III. Each ITFS licensee that leases excess capacity for digital services must maintain the ability to recapture for the transmission of ITFS programming at least an additional 20 % of the capacity of the channels it leases. The lowest permissible annual rate of recapture shall be 5% of the capacity of its ITFS channels, with a maximum one year advance notice per instance of recapture. The right to recapture may be deferred during the first five years of any excess capacity lease agreement upon agreement of the parties. The parties may agree to an economic adjustment of the ITFS licensee's consideration under the agreement upon recapture, provided that any economic detriment shall not be disproportionate to the amount of capacity recaptured and shall

not include any "Baseline Consideration." "Baseline Consideration" shall be defined to include: (1) any transmitters, transmit antenna, combiners and waveguide necessary to operate the station ("Station Equipment"), (2) any transmit site lease costs necessary to house the Station Equipment; and (3) the utility and maintenance costs necessary to maintain and operate the Station Equipment.

- IV. All ITFS licensees should be permitted to "channel load" any or all of their capacity onto any ITFS channel within the same multi-licensee system. Such "channel loading" shall not be considered negatively at the time the ITFS licensee seeks renewal of its authorization.
- V. Any ITFS licensee should be permitted to "swap" channels with any other ITFS or MDS licensee in the 2.5 GHz band operating in the same geographic area. Particularly in order to promote the introduction of advanced technologies, applications for Commission approval of such swaps should be given expedited consideration by the Commission.
- VI. In recognition of the difficulties that may be faced in converting spectrum used for return paths to downstream uses, each ITFS licensee that leases channels to be employed for return paths shall be required to maintain at least 25% of its licensed channels to be used for downstream transmissions during the term of the lease and following termination of its leasing arrangement.
- VII. ITFS licensees should be permitted to enter into excess capacity leases of up to fifteen years duration, provided that any lease extending beyond the term of a licensee's authorization provides for termination of the lease in the event the Commission denies an application for renewal.
- VIII. Excess capacity lease agreements that provide for digital usage and were entered into prior to the release of an order adopting these concepts shall be grandfathered for their duration.
- IX. ITFS licensees should have opportunities equal to those afforded MDS licensees to implement advanced technologies utilizing their spectrum.
- X. Authorizations for return paths and boosters on ITFS channels should be issued in the name of the ITFS licensee of that channel.

XI. The Commission should adopt rules providing for the expedited processing and granting of applications to introduce advanced technologies on MDS and ITFS channels, provided that the rules assure incumbents protection against any impermissible harmful electrical interference that results upon the initiation of service. In the application of expedited processing and grant procedures for two-way systems, ITFS licensees must be protected from impermissible interference caused by two-way or booster operations, whether or not an ITFS licensee has petitioned to deny an application and/or whether or not the licensee is a participant in an excess capacity agreement.

XII. All excess capacity leases shall provide that the ITFS licensee shall have the right to use any Internet services offered over the system at no greater than the lowest prevailing commercial rate and shall have reasonable access, at rates to be negotiated between the parties, to other services offered over the system (such as addressability and two-way capability).

NATIONAL ITFS ASSOCIATION, INC.

By: _____
Theodore Steinke
Chairman of the Board and CEO

WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC.

By: _____
Andrew Kreig
President

Date: January 7, 1998.